IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 282 of 2005.

Date of Decision: 19.6.2007

Dhian Singh & ors. ...Petitioners.

Versus.

State of H.P. & ors. …Respondents

Coram:
The Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice.
The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner(s): Mr. H.K.Bhardwaj, Advocate..

For the Respondent(s): Mr. Ram Murti Bisht, Dy. Advocate General. for respondents 1, 3 & 4.

Deepak Gupta, ACJ (Oral).

By means of this writ petition, the petitioners have prayed that the respondents be directed to mark the standing trees in village/Mauza Rangwa-Pabar, Sub Tehsil Kamru, District Sirmaur, HP and that felling orders be issued and deviation period may also be extended.

The brief facts of the case are that under the 10 years felling programme, the forest falling in the village Rangwa Pabar also came up for silviculture felling. The petitioners appointed one Shri Hira Singh Thakur as their Special Power of Attorney and applied for permission to fell the trees under the 10 years felling programme. This scheme was valid from 1.4.2003 to 31.3.2004. On 22.8.2003, the Special Attorney of the petitioners forwarded the case of the petitioners to the concerned forest authorities for granting permission for demarcation of the land and marking the trees for felling. The Special Attorney

had also applied for granting permission in other Mauzas which was granted to him but with respect to Mauza Rangwa Pabar permission was not granted. The case of the petitioners is that on 17.2.2004, the land was got demarcated by the revenue authorities and even though the scheme was extended from 31.3.2004 to 31.3.200, the trees in Mauza Rangwa Pabar were neither marked nor permission was granted to fell the trees.

The stand of the respondents is that it is the duty of the land owner(s) who sells his land to get the same demarcated. According to the respondents, no demarcation was done in the presence of the Range Officer of the Forest Department as required under the law and since there was no valid demarcation, the trees could not have been marked and felling orders could not have been issued.

The record of the case was called for and we have gone through the same. The orders passed by the revenue authorities on 17.2.2004 when the demarcation is alleged to have been done only shows that some forest officials were present. Who were the officials? What was their rank? Were they authorized to represent the Forest Department? These questions remain unanswered.

It is apparent from the record that the demarcation dated 17.2.2004 was not done in the presence of the authorized officer of the Forest Department and, therefore, the respondents are right in saying that the marking could not be done and the felling orders could not be issued.

Faced with this situation, Shri H.K.Bhardwaj learned counsel for the petitioners submitted that at least deviation of the time period be granted and the respondents be directed to demarcate the land of the petitioners. This prayer cannot be entertained at this stage. On 28.8.2003, vide letter Annexure P-11, the case of the petitioners was forwarded by the D.F.O. Renuka Ji to the Range Officer, Kafota. A copy of this communication was sent to the land owners through their Special Attorneys. According to the provisions of the H.P. Forest

Produce (Regulation of Trade) Rule, 1982, it is the responsibility of the land owners or their Special Power of Attorneys to get the demarcation of the lands and marking of the trees done. Rule 4(2)(3)& 4 of the said Rules reads as follows:-

> (2) The Agent, on receipt of application, shall forward the original to the Divisional Forest Officer concerned with a simultaneous reference to the Tehsildar and in the case of Sub Tehsil to the Naib Tehsildar of the area concerned for demarcation of the area in which the forests produce is intended to be sold by the owner and offered for sale to the Agent. A copy of the request made to the Tehsildar/Naib Tehsildar will also be endorsed to the owner with directions to get the area demarcated.
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> (3) The demarcation of the area from which the forest produce is intended to be extracted and sold will be carried out by the Revenue officer not below the rank of Naib Tehsildar in the presence of Range Officer of the area concerned and nominee of the Agent.
>
> Provided that where Naib Tehsildars are not posted, the demarcation of the area will be carried out by the Field Kanungos.
>
> (4) It will be the responsibility of the owner of his legally authorized representative to get the area demarcated expeditiously to enable the Agent to fell and convert the trees within time."

These rules clearly lay down that it is the responsibility of the owner or his legally authorized agent to get the area demarcated expeditiously and it is also clear that the demarcation has to be carried out by the revenue officer not below the rank of Range Officer. The respondents have placed on record a letter dated 22.3.2004 Annexure R-II sent to the Special Attorney of the petitioners in which it is clearly stated that the demarcation work in Mauza Rangwa Pabar has not started because of the non-cooperation of the Special Power of Attorney. Another letter in this behalf was written on 31.3.2004.

Despite these letters, the petitioners have not taken any steps to get the demarcation done. Therefore, we find no merit in this writ petition and the same is accordingly dismissed. No order as to costs.

(Deepak Gupta), ACJ.

June 19, 2007. (V.K.Ahuja), J.

s.